

STATUS OF CLAIMS

Claims 1-18 are pending. Claims 1-18 are rejected and are the subject of this appeal. Claims 1, 7 12, 18, have been previously amended. Claims 2-6, 8-11, 13-17 remain as originally filed.

RESPONSE TO AMENDMENT

The rejection of new matter under 35 U.S.C. 132(a) was determined to be in error during the telephone interview of 10/13/2006. This rejection has been withdrawn by the examiner.

Claim Rejections -35 USC 112

The examiner objection with regards the lack of qualifiers for the term longitudinal strands in claims 1, 15 and 18 has been addressed in the Claim list appendix. Wherever ambiguous, the terms primary longitudinal strand and secondary longitudinal strand has been used.

Claim Rejection 35 USC 102

Examiner based the rejection on DOUTHWAITE Patent #4,003,178. Claim 1 of this prior art is presented below with the most relevant words emboldened:

"1. A length or panel of welded wire rod mesh defined by longitudinal rods, equally spaced apart and transverse rods, equally spaced apart and, which panel is corrugated or deformed at spaced intervals such that rods extending in the same direction are off-set from the remaining rods parallel thereto with deformation of the adjacent portions of the rods at right angles thereto, **and a rigid metal member is inserted through between the off-set rods** and those parallel thereto at least adjacent one edge."

Figure 1 in DOUTHWAITE's patent is shown below. It is clear that the rigid metal members which are inserted through the off-set rods are themselves offset and therefore increase the

rigidity of the assembly of the lath as has been argued before in previous responses to office actions.

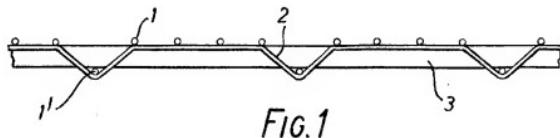
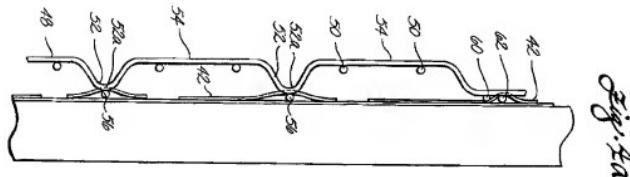


FIG. 1

The same problem besets the JAENSON patent 5,540,023 which has the same architecture. JAENSON patent is illustrated by Figure 4 in his patent in which rods are welded into the furrs 56:



As can be seen the architecture in DOUTHWAITE and in JAENSON is almost identical. Rigidity of the assembly in DOUTHWAITE (FIG. 1) is enhanced by the rods positioned at the bottom (or concave side) of the furrs. In JAENSON (FIG 4a), rigidity is enhanced by positioning the rods in the crest (or convex side) of the furrs. In contrast the present invention flexibility is enhanced as shown in Figure 5 by positioning rods neither on the concave side of the furrs 4 nor on their convex side. In fact as originally stated in our Claim 1, rigidity is enhanced by a configuration such that the furrs **are situated between said longitudinal strands** as stated in the original claims:



FIG. 5

One of the differences between this invention and those of DOUTHWAITE and JAENSON is made clear in Claim 1 paragraph e) quoted below with the most relevant passage emboldened:

“e) a plurality of spacing furrs formed by bending said transverse strands into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, and located along said transverse strands, **said spacing furrs situated between said longitudinal strands**, tip of said indentations defining a second plane away from said first plane.”

Note that we clearly claim that the spacing furrs are situated **between the longitudinal strands**. The invention differs from DOUTHWAITE and JAENSON in a useful manner as shown in the appeal brief of 06/20/2005 and our responses of 12/11/2005 and 11/17/2005. The lath in our invention can be rolled for shipping at significant economic benefit compared to JAENSON and DOUTHWAITE. While the JAENSON and DOUTHWAITE laths can be rolled using brute force, their furrs are permanently deformed by the rolling action thus eradicating their utility as spacing features. Since the quoted prior art has no utility when it is rolled, under 35USC 112 this invention is novel; the examiner’s argument under 35USC 102 does not apply.

Claim Rejection Under 35USC103

The examiner dismisses our arguments as “moot” without exposing any fallacy in our presentation regarding the differences between our invention and JAENSON. The examiner then introduces more prior art (DOUTHWAITE) which relies on features identical to JAENSON.

Regarding claim 3 the examiner admits that DOUTHWAITE does not disclose that his lathing material can be wound into rolls but that his material is flexible. She infers, without any support or reference, that his lathing can be rolled into cylinders for shipping. In fact, the lathing of DOUTHWAITE and JAESON designs are not sold in rolls. They are sold in sheets as has been abundantly discussed in the appeal supplement of 11/17/2005. Crucially important is that flexibility in this invention is enhanced by **not** positioning rigid bars at the bottom or on the crest of the furrs.

Obviousness rejection has been discounted on the basis of technological superiority (testing has shown that lathing of the JAENSON and DOUTHWAITE design are damaged by rolling). Obviousness has also been discounted on the basis of economical advantages. Shipping lathing in rolls does provide a significant economic benefit. These issues have already been

discussed in our responses of 12/11/2005 and 11/17/2005 and in the appeal brief of 6/20/2005.

Response to Arguments

As can be seen in Figure 1 of DOUTHWAITE and FIG. 4a of JAENSON the architectures of DOUTHWAITE and JAENSON resemble each other with regard the placement of a rigid rod at the bottom of a furr. Therefore all the technical and economic arguments offered in the appeal brief supplement of 10/12/2005 10/17/2005 regarding the superior flexibility of this invention compared to JAENSON can be applied to DOUTHWAITE. In addition, enhanced flexibility is clearly mentioned as a goal of the invention in paragraph 15 of the background which is quoted below:

“[0015] A problem of economic importance is the method for packaging the lath; more specifically the ability of the lath to be rolled up for easy handling and shipping. Clancy in US Patent 617,458 and Jaenson in US Patent 5,540,023 describe wire mesh lathing material in which strands are welded at the furring location and therefore not in the plane of the lath. Consequently, this structure makes their laths impossible to be rolled up for any practical purposes.”

It is clear from the background that this invention anticipated the utility of rolling the lath and understood that when lathes produced by the quoted prior art technology were rolled using brute force, their furrs would be destroyed thus eradicating their utility as spacing devices.

The examiner states in page 11 of the OA:

“it is noted that the features upon which applicant relies (i.e., JAENSON is not physically capable of being rolled and unrolled and maintain its original cross-sectional shape or configuration) are not recited in the rejected claim(s)”

In fact, the claims of the invention do include in the preamble the general purpose of the invention (lathing material for mounting stucco plaster and the like onto a building frame) without going into the nitty-gritty details of its objects and advantages over the prior art. Claim 1 recites a structure which provides a marked improvement in utility over the prior art. The

examiner is not correct in insisting that a claim must include (perhaps in the preamble or in a whereby clause?) a clear and complete statement of what the objects and advantages of the invention are over the prior art: "capable of being rolled and unrolled and maintain its original cross-section shape or configuration." Objects and advantages are discussed in the specification and in the background.

An affidavit in the form of a letter to myself by an expert in the field, Professor Perry Adebar of Civil Engineering at the University of British Columbia, is hereby included as an appendix. This document, in the opinion of this expert, states irrevocably that the utility of lathes described by the prior art, such as those produced by JAENSEN, loose their utility when they are rolled: their furrs are deformed and cease to operate as spacers.

Respectfully Yours

A handwritten signature in black ink, appearing to read "George S. Levy". The signature is fluid and cursive, with "George" and "Levy" being more distinct and "S." being a smaller part of the middle name.

George Levy,
Patent Agent 53211,
Phone: (858)259-2226
Fax: (858)259-2233